



The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

Tourrettes Trust
c/o Ian Ferguson
333 Lee Street
Brookline, MA 02445

Re: Wetlands File No. 2001-00626
Lake Winnepesaukee, Wolfeboro, NH

ADMINISTRATIVE ORDER
No. WD 04-012

July 2, 2004

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Water Division to Tourrettes Trust pursuant to RSA 483-B:11. This Administrative Order is effective upon issuance.

B. PARTIES

1. The Department of Environmental Services, Water Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, NH 03301.
2. Tourrettes Trust is a real estate trust established in the Commonwealth of Massachusetts having a mailing address of 333 Lee Street, Brookline, MA 02445.

C. STATEMENTS OF FACTS AND LAW

1. Pursuant to RSA 483-B, the Comprehensive Shoreland Protection Act ("CSPA"), the Department of Environmental Services ("DES") regulates development activities in the protected shoreland zone established under the CSPA. Pursuant to RSA 483-B:17, the Commissioner of DES has adopted NH Administrative Rules Env-Ws 1400 to implement this program.
2. RSA 483-B:18, I provides that failure, misrepresentation, or refusal to comply with RSA 483-B or rules adopted under [that] chapter shall be deemed a violation under RSA 483-B and subject to criminal and civil penalties.
3. Tourettes Trust is the owner of land located at Wolfeboro tax map 227, lot 39 ("the Property").
4. On September 20, 2002, DES personnel inspected the Property and found the following:
 - (a) An existing nonconforming dwelling had been completely removed and no construction of new structures had begun.
 - (b) The footprint of the new dwelling exceeded the development standard set forth in RSA 483-B:11 by expanding the footprint within the protected shoreland.

5. On September 20, 2002, DES personnel explained the need for a variance or waiver for continued construction. Jim Rines of White Mountain Survey Company, Inc. indicated that he would submit the applicable waiver paperwork.
6. On September 15, 2003, DES received a complaint about possible violation of RSA 483-B at the Property. A follow up field inspection on October 1, 2003 found a two-to three-story steel superstructure erected on the site.
7. NH RSA 483-B:11, I provides that "nonconforming structures, erected prior to July 1, 1994, located within the protected shoreland may be repaired, renovated, or replaced in kind using modern technologies, provided the result is a functionally equivalent use. Such repair or replacement may alter the interior design or existing foundation, but no expansion of the existing footprint or outside dimensions shall be permitted."
8. NH RSA 483-B:11, II provides that "[w]hen reviewing requests for the redevelopment of sites that contain nonconforming structures erected prior to July 1, 1994, the commissioner shall review proposals which are more nearly conforming than the existing structures, and may waive some of the standards specified in RSA 483-B:9, so long as there is at least the same degree of protection to the public waters."
9. DES has no record of receiving a request for, or granting, a waiver for the work in question.

D. DETERMINATION OF VIOLATIONS

1. Ian Ferguson & Tourrettes Trust have violated RSA 483-B:11 by expanding the outside dimensions of a nonconforming dwelling within the protected shoreland without a waiver from DES.

E. ORDER

Based on the above findings, DES hereby orders Tourrettes Trust as follows:

1. Immediately cease all construction activities on the Property related to the construction of those portions of the dwelling between the reference line and the primary building setback line.
2. Submit a restoration plan to DES for removal of all portions of the structure, located between the reference line and the primary building line, which exceed the height of the preexisting single-story structure within 30 days of this order.
3. Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, other than appeals, to DES as follows:

Darlene Forst
DES Water Division
29 Hazen Drive
PO Box 95
Concord, NH 03302-0095
Fax: (603) 271-6588
email: dforst@des.state.nh.us

F. APPEAL

Any person aggrieved by this Order may appeal the Order to the New Hampshire Water Council by filing an appeal that meets the requirements specified in Env-WC 200 within 30 days of the date of this Order. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or at <http://www.des.state.nh.us/desadmin.htm>. Filing an appeal or motion for reconsideration of the Order will not automatically relieve you of your obligation to comply with the Order.

G. OTHER PROVISIONS

Please note that RSA 483-B provides for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. Ian Ferguson and Tourrettes Trust remains obligated to comply with all applicable requirements. DES will continue to monitor Tourrettes Trust's compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Carroll County Registry of Deeds so as to run with the land.


Harry T. Stewart, P.E., Director
Water Division


Michael P. Noon, Commissioner

Certified Mail/RRR: 70023150000154111258

cc: Gretchen Hamel, Administrator, DES Legal Unit ✓
Public Information Officer, DES Public Information Center
Jennifer Patterson, Senior Asst. Attorney General, EPB, NHDOJ
Carroll County Registry of Deeds
Wolfeboro Selectmen
Wolfeboro Conservation Commission